

REMARKS

Claims 1 to 10, 15 to 30, 32, 33, 38 to 49, 51, and 52 have been canceled from the application. New claim 60 has been added to the application.

In paragraph no. 1 of the office action, claims 1 to 34 and 37 to 53 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 16 of copending patent application no. 10/801,734. A terminal disclaimer relating to copending patent application no. 10/801,734, in compliance with 37 CFR 1.321(c), is being filed with this amendment. Accordingly, the withdrawal of the provisional rejection of claims 1 to 34 and 37 to 53 under the judicially created doctrine of obviousness-type double patenting is solicited.

In paragraph no. 2 of the office action, claims 2 to 5, 15 to 26, and 38 to 45 were rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The rejection asserts that the limitations in these claims, "tested in accordance with ASTM Test Designation C1338-00", D2020-92", or G21-96", render the claims vague and indefinite. Claims 2 to 5, 15 to 26, and 38 to 45 have been canceled. Accordingly the rejection of claims 2 to 5, 15 to 26, and 38 to 45 under 35 USC 112, second paragraph, is moot.

In paragraph no. 3 of the office action, claims 1 to 5, 12 to 26, 31, 35 to 45, 50, 54, and 55 were rejected under 35 USC 102(b) as being anticipated by Symons (USPN 6,123,795). Claims 1 to 5, 15 to 26, and 38 to 45 have been canceled. New claim 60 is now the only independent claim directed solely to a fungi resistant asphalt. The fungi resistant asphalt of claim 60 and dependent claim 11, as well as the fungi resistant asphalt of amended independent claim 12, amended independent claim 13 and dependent claims 14, 31, 34, 35, and 36, and amended independent claim 37 and

dependent claims 50, 53, 54, and 55 consists of asphalt; a fungi growth-inhibiting agent comprising 2-(4-Thiazolyl) Benzimidazole with the 2-(4-Thiazolyl) Benzimidazole present in the asphalt in an amount between 200 and 2000 ppm wherein the asphalt is fungi growth resistant; and an essential plant oil odor-reducing additive in the asphalt an amount approximating 1 part by weight essential plant oil odor-reducing additive to 10,000 parts by weight asphalt.

Symons discloses a sheet material comprising a lignocellulosic material such as fiberboard that is impregnated with a composition that includes from .25% to 30% by weight anhydride, from 1.5% to 60% by weight isocyanate resin, from 5% to 40% by weight bitumen, asphalt, coal tar and pitch, and may include a fungicide.

The Symons composition is not a fungi resistant asphalt but a composition of an anhydride and an isocyanate resin that only includes from 5% to 40% by weight bitumen, asphalt, coal tar and pitch. Unlike claims 60, 12, 13, and 37 and the claims depending therefrom, Symons does not disclose or suggest a fungi resistant asphalt that is solely made up of asphalt; a fungi growth-inhibiting agent comprising 2-(4-Thiazolyl) Benzimidazole with the 2-(4-Thiazolyl) Benzimidazole present in the asphalt in an amount between 200 and 2000 ppm wherein the asphalt is fungi growth resistant; and an essential plant oil odor-reducing additive in the asphalt an amount approximating 1 part by weight essential plant oil odor-reducing additive to 10,000 parts by weight asphalt. In view of the amendments to the claims and for the reasons set forth above, the withdrawal of the rejection of the claims as anticipated by Symons is requested and the allowance of claims 60, 11 to 14, 31, 34 to 37, 50, and 53 to 55 is solicited.

In paragraph no. 4 of the office action, claims 6 to 8, 27 to 30, and 46 to 49 were rejected under 35 USC 103(a) as being unpatentable over Symons (USPN 6,123,795) in view of Inoue (USPN 4,629,645). Claims 6 to 8, 27 to 30, and 46 to 49 have been canceled. However, the fungi resistant asphalt of new fungi resistant asphalt claim 60

and dependent claim 11, as well as the fungi resistant asphalt of amended independent claim 12, amended independent claim 13 and dependent claims 14, 31, 34, 35, and 36, and amended independent claim 37 and dependent claims 50, 53, 54, and 55 consists of asphalt; a fungi growth-inhibiting agent comprising 2-(4-Thiazolyl) Benzimidazole with the 2-(4-Thiazolyl) Benzimidazole present in the asphalt in an amount between 200 and 2000 ppm wherein the asphalt is fungi growth resistant; and an essential plant oil odor-reducing additive in the asphalt an amount approximating 1 part by weight essential plant oil odor-reducing additive to 10,000 parts by weight asphalt. Accordingly, the rejection of claims 6 to 8, 27 to 30, and 46 to 49 will be discussed in connection with claims 60, 11 to 14, 31, 34 to 37, 50, and 53 to 55.

Symons discloses a sheet material comprising a lignocellulosic material such as fiberboard that is impregnated with a composition that includes from .25% to 30% by weight anhydride, from 1.5% to 60% by weight isocyanate resin, from 5% to 40% by weight bitumen, asphalt, coal tar and pitch, and may include a fungicide.

Inoue discloses a mold inhibitive coated film adapted to be adhesively stuck to an object such as a wall, ceiling or the like. One of the fungi growth inhibiting agents disclosed is 2-(4-Thiazolyl) Benzimidazole in an amount from 0.05 to 10% by weight of the coating.

While Inoue discloses the use of 2-(4-Thiazolyl) Benzimidazole as a mold inhibiting agent in a coated film composition, Inoue like Symons fails to disclose suggest the use of 2-(4-Thiazolyl) Benzimidazole in the amounts set forth in claims 60, 11 to 14, 31, 34 to 37, 50, and 53 to 55 in a fungi resistant asphalt that is solely made up of asphalt; a fungi growth-inhibiting agent comprising 2-(4-Thiazolyl) Benzimidazole with the 2-(4-Thiazolyl) Benzimidazole present in the asphalt in an amount between 200 and 2000 ppm wherein the asphalt is fungi growth resistant; and an essential plant oil odor-reducing additive in the asphalt an amount approximating 1 part by weight essential

plant oil odor-reducing additive to 10,000 parts by weight asphalt. In view of the amendments to the claims and for the reasons set forth above, the allowance of claims 60, 11 to 14, 31, 34 to 37, 50, and 53 to 55 over Symons and Inoue is solicited.

In paragraph no. 5 of the office action, claims 9, 32, and 51 were rejected under 35 USC 103(a) as being unpatentable over Symons (USPN 6,123,795) in view of Fischer et al (WO 01/72125 A2). While claims 9, 32, and 51 have been canceled, the fungi resistant asphalt of new claim 60 and dependent claim 11, as well as the fungi resistant asphalt of amended independent claim 12, amended independent claim 13 and dependent claims 14, 31, 34, 35, and 36, and amended independent claim 37 and dependent claims 50, 53, 54, and 55 consists of asphalt; a fungi growth-inhibiting agent comprising 2-(4-Thiazolyl) Benzimidazole with the 2-(4-Thiazolyl) Benzimidazole present in the asphalt in an amount between 200 and 2000 ppm wherein the asphalt is fungi growth resistant; and an essential plant oil odor-reducing additive in the asphalt an amount approximating 1 part by weight essential plant oil odor-reducing additive to 10,000 parts by weight asphalt.

Symons discloses a sheet material comprising a lignocellulosic material such as fiberboard that is impregnated with a composition that includes from .25% to 30% by weight anhydride, from 1.5% to 60% by weight isocyanate resin, from 5% to 40% by weight bitumen, asphalt, coal tar and pitch, and may include a fungicide.

Fischer et al discloses active compound combinations comprising known cyclic ketoenols on the one hand and other known insecticidally active compounds on the other hand which are highly suitable for controlling animal pests such as insects and undesired acarids. Fischer et al indicates that bitumen or bituminous substances may be used in such compounds as binders in amounts up to 10% by weight and that other agents such as colorants, pigments, water repellants, odour-masking agents, and inhibitors or anticorrosive agents and the like can also be used in such compounds.

The Symons composition is not a fungi resistant asphalt but a composition of an anhydride and an isocyanate resin that only includes from 5% to 40% by weight bitumen, asphalt, coal tar and pitch. While Fischer et al discloses compounds having insecticidal and acaricidal properties that can include small amounts of bituminous substances as a binder and odour-masking agents, neither Symons nor Fischer et al disclose or suggest a fungi resistant asphalt that is solely made up of asphalt; a fungi growth-inhibiting agent comprising 2-(4-Thiazolyl) Benzimidazole with the 2-(4-Thiazolyl) Benzimidazole present in the asphalt in an amount between 200 and 2000 ppm wherein the asphalt is fungi growth resistant; and an essential plant oil odor-reducing additive in the asphalt an amount approximating 1 part by weight essential plant oil odor-reducing additive to 10,000 parts by weight asphalt. For the reasons set forth above, the allowance of claims 60, 11 to 14, 31, 34 to 37, 50, and 53 to 55 over Symons and Fischer et al is solicited.

In paragraph no. 6 of the office action, claims 10, 11, 33, 34, 52, and 53 were rejected under 35 USC 103(a) as being unpatentable over Symons (USPN 6,123,795) in view of Inoue (USPN 4,629,645) and Beilfuss et al (US 2001/0021711 A1). Claims 10, 33, and 52 have been canceled. Claims 11, 34, and 53 still remain under consideration.

Beilfuss et al disclose the use of fungicide and a stabilizer, such as zinc pyrithione in water-based industrial products, household products, and cosmetic products. However, Beilfuss et al does not otherwise supplement the disclosures of Symons and Inoue. Accordingly, claims 11, 34, and 53 are patentable over Symons, Inoue, and Beilfuss et al for the same reasons discussed above in connection with the rejection of paragraph no. 4 of the office action based on Symons and Inoue.

Claims 56 to 59 have been rejected under 35 USC 103(a) as being unpatentable over Fields (US 2003/0129899 A1) in view of Grubka (USPN 5,573,810).

Fields discloses a fibrous mat that can be made of synthetic fibers and saturated with asphalt.

Grubka discloses the application of granules or particles upon the exposed surfaces of roofing shingles wherein, to combat the growth of fungus, algae and other microorganisms, the granules or particles are composed of or contain copper or other metals such as zinc or are particles of metallic zinc or copper.

However, unlike claim 56 and the claims depending therefrom, neither Fields nor Grubka disclose or suggest a fungi resistant asphalt containing sheet material that has a nonfibrous polyester or polycarbonate polymeric film base sheet with a fungi resistant asphalt layer on a first major surface of the polymeric film base sheet that consists of asphalt; a fungi growth-inhibiting agent comprising 2-(4-Thiazolyl) Benzimidazole with the 2-(4-Thiazolyl) Benzimidazole present in the asphalt in an amount between 200 and 2000 ppm wherein the asphalt is fungi growth resistant; and an essential plant oil odor-reducing additive in the asphalt an amount approximating 1 part by weight essential plant oil odor-reducing additive to 10,000 parts by weight asphalt. In view of the amendments to claims 56 to 59 and for the reasons set forth above, the allowance of claims 56 to 59 over Fields and Grubka is solicited.

Respectfully submitted,



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